

## 11

**Federal Consistency and the National Interest**

This chapter describes the federal-state coordination requirements of the CZMA, the CZMA's national interest considerations, and the federal consistency process.

Illinois coordinates and collaborates with federal agencies on state and federal coastal projects and issues. Illinois has developed the ICMP, in part, by providing a meaningful opportunity to federal agencies to participate in program development. Illinois contacted each "relevant" federal agency listed in 15 C.F.R. § 923.2(d) and other federal agencies the state determined to be relevant in identifying potential federal actions that have an impact on our coastal lands and waters. Illinois took the following steps to solicit input from federal agencies on the development of the ICMP:

On March 16, 2010, Illinois solicited statements from the head of each of these federal agencies concerning activities and resources of national interest and benefit, and review of federal activities, permits and licenses, and assistance programs conducted within the Lake Michigan watershed.

Federal contacts were asked to submit any input by April 9, 2010. These written comments are included in Appendix D. Federal agencies were solicited for comments by phone on March 31, 2010. Comments were received, addressed, and incorporated in the ICMP from the U.S. Coast Guard, U.S. Fish and Wildlife Service, U.S. Navy, Naval Facilities Engineering Command Midwest, and the U.S. Army Corps of Engineers.

On January 18, 2011, regional federal agency contacts, as well as all Great Lakes states coastal program contacts, were sent notification through electronic mail of the Illinois Coastal Management Program's public hearing and webinar component on February 18, 2011, in Chicago, Illinois. The ICMP website also contained detailed information prior to and following the hearing, including presentation materials. Electronic mail was sent to all contacts prior to the hearing as a reminder on February 1, 2011. Comments were received electronically, addressed, and incorporated in the ICMP from the U.S. Navy, Naval Facilities Engineering Command Midwest and the Nuclear Regulatory Commission.

Letters and electronic correspondence received can be found in Appendix D.

The following federal agencies were contacted:

- USEPA
- US Coast Guard
- USDOT Federal Highway Administration
- USDOT Maritime Administration
- US Fish and Wildlife Service
- U.S. Navy, Naval Facilities Engineering Command Midwest

- U.S. Army Corps of Engineers
- Federal Energy Regulatory Commission
- U.S. Department of Housing and Urban Development
- Nuclear Regulatory Commission
- General Services Administration

The ICMP public hearing took place on Friday February 18, 2011, at the James R. Thompson Center in Chicago, Illinois from 12:00 to 3:00 PM CST. The first hour of the hearing was an open house. Attendees were able to view the boundary maps and other ICMP material in the hearing room. Formal presentations began at 1:00 PM and were accompanied by an online webinar. Three presentations were given, links to each can be found on the home page of the ICMP website. Presentations were:

- *The Illinois Coast – Geologic History, Human Impact, and Management Challenges [PowerPoint slides]*. Michael J. Chrastowski, Ph.D., P.G. Senior Coastal Geologist, Illinois State Geological Survey. University of Illinois at Urbana-Champaign.
- *Illinois Coastal Management Program [PowerPoint slides]*. Todd Main, Senior Policy Advisor. Illinois Department of Natural Resources.
- *Clean and Green Marina Program [PowerPoint slides]*. Rachel Sudimack, Policy Assistant. Illinois Department of Natural Resources.

Following the presentations, the public asked questions and provided comments which were transcribed with the corresponding response by IDNR and NOAA in Appendix D. Written comments were received from the Alliance for the Great Lakes and Friends of the Chicago River and can be found in Appendix D as well.

### **Federal-State Consultation Requirements**

The CZMA and NOAA's regulations provide substantial opportunity for federal agencies to review and comment on the content of a state's program. The state must evaluate federal comments received during program development, and where appropriate based on the review of the state and NOAA, accommodate federal agencies' comments in the management program. Federal agency comments should focus on one or more of the following areas of the ICMP:

- Management of coastal resources for preservation, conservation, development, enhancement or restoration,
- Statements of the national interest in planning for or siting of facilities more than local in nature,
- Uses subject to the management program,

- Areas of particular concern to the management program,
- Boundary determinations, including delineation of federal lands excluded from the coastal zone,
- Shorefront access and protecting planning, energy facility planning, and erosion planning processes,
- Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(d)(3) of the CZMA, and
- The federal consistency process described in the ICMP pursuant to CZMA § 307 and 15 C.F.R. Part 930.

### Identifying the National Interests

The ICMP must provide adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. The state must describe the national interest in planning for and siting of facilities considered during program development; indicate the sources relied upon for a description of the national interest; indicate how and where consideration of the national interest is reflected in the management program; and, describe the process for continued consideration of the national interest. Federal agencies administer many federal laws and programs within the ICMP coastal boundary, such as dredging navigation channels and harbors, protection of federally endangered species, and cleanup of contaminated sites. Federal agencies own land such as military bases, national forests, national monuments, and conduct many projects and activities within our coastal area. They also provide financial assistance for projects including our transportation systems.

In developing the CZMA, Congress recognized the distinct and irreplaceable nature of the nation's coast and its value to the present and future well being of the nation. The primary focus for consideration of the national interest under this program is to provide for protection of facilities, and due consideration of activities which are in the national interest. Consideration of the national interests is a benefit to states and local communities because these requirements establish a reciprocal state-federal relationship. Federal agencies have the opportunity to give full consideration of their interests in the development of the ICMP ensuring comprehensive coastal management purposes. Identifying specific national interests within the ICMP boundary assists in identification of federal activities subject to federal consistency.

The following is a general list of issues and federal activities that the state considers to be in the national interest within our coastal boundary:

- Water transportation, ports and other navigation facilities
- Highway, air and rail transportation
- National defense
- Energy facility siting and production, including transport and transmission

- Maintaining recreational uses of areas and developing and expanding public recreation areas
- Protection of threatened and endangered species and their habitats
- Protection of historical, cultural, and archeological sites
- Protecting wetlands and significant habitat areas
- Activities conducted under CERCLA (Superfund)
- Hazardous Waste Management (RCRA)
- Developing improved methods to stop and control the spread of invasive species
- Homeland Security activities

The ICMP will consider national interest in the review, certification, and permitting processes conducted by IDNR which are placed on public notice and made available to federal agencies. Review of these applications considers the national interest as reflected in the regulations and policies, and also considers comments from the public and from federal agencies involved in making a decision on the permit application. Consideration of the national interest may also be requested of IDNR by federal agencies at any time. Specific information on energy facility siting procedures is outlined in Chapter 10. Federal agencies were given multiple opportunities to comment on the national interest in the development of the ICMP program. A summary of their comments can be found in Appendix D.

### **Federal Consistency**

The ICMP must describe the procedures it will use to implement the federal consistency authority. The requirements for inclusion in the ICMP submission are provided in CZMA § 306(d)(14), 15 C.F.R. § 923.53 and 15 C.F.R. Part 930. These include: designating a single state agency to implement federal consistency and issue federal consistency concurrences and objections; state procedures the designated state agency shall use to for federal consistency purposes; provide for public participation in the State agency's review of a federal agency's consistency determination or an applicant's consistency certification for a federal license or permit activity; have identifiable enforceable policies; and a list of federal license or permit activities that will be subject to consistency. Federal regulations governing federal consistency for states with approved coastal management programs are provided at 15 C.F.R. Part 930. These regulations cover many of the processes, procedures, and variable situations that need to be followed by state and federal agencies, applicants requiring a federal license or permit, or state agencies and local governments seeking federal assistance. This chapter summarizes the federal consistency requirement and describes the ICMP's federal consistency procedures.

### **General Federal Consistency Requirements and Objectives**

The "Federal Consistency" provision of the CZMA gives states with federally approved coastal management programs the responsibility for reviewing federal actions to ensure they are consistent with enforceable policies of the federally-approved ICMP.

One regulatory objective is to implement the federal consistency requirement in a manner that strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs, and the importance of federal activities. Another objective is to provide flexible procedures that foster intergovernmental cooperation, and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the CZMA are met.

*Federal agencies, State agencies, and applicants should coordinate as early as possible in developing a proposed federal action and may mutually agree to intergovernmental coordination efforts, to meet the requirements of these regulations, provided that public participation requirements are met and applicable State management program enforceable policies are considered. 15 C.F.R. § 930.1(c).*

Illinois state agencies and federal agencies are working on many projects of common interest. Federal consistency provides a mechanism through which federal agencies and applicants for federal authorization and funding become aware of the ICMP's enforceable policies and any state authorizations required for a proposed activity that are part of the ICMP. The process encourages early coordination, review, and comment on federal actions that may have reasonably foreseeable effects on the uses or resources of our coastal zone. It provides an opportunity for state and federal agencies to improve existing coordination efforts, and may provide a unique role for improving coordination with regional and local governments.

### **Federal Actions subject to Federal Consistency**

The following federal actions are subject to federal consistency:

**Federal Agency Activities** - means any functions performed by or on behalf of a federal agency in the exercise of its statutory responsibilities. The term "Federal agency activity" includes a range of activities where a federal agency makes a proposal for action initiating an activity or series of activities when coastal effects are reasonably foreseeable. The term federal "development project" means a federal agency activity involving the planning, construction, modification, or removal of public works, or facilities, and includes the acquisition, use, or disposal of any coastal use or resource (See 15 C.F.R. Part 930, Subpart C).

**Federal License or Permit Activities** - means any required authorization, certification, approval, lease, or other form of permission which any Federal agency is empowered to issue to a non-federal applicant (See 15 C.F.R. Part 930, Subpart D). "Applicant" means any individual, public or private corporation.

**Federal Assistance** means assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid (See 15 C.F.R. Part 930, Subpart F). "Applicant agency" means any unit of state or local government, or any related public entity such as a special purpose district, which submits an application for federal assistance.

The federal consistency requirements and procedures regarding each of the three above actions are different and are discussed separately as follows:

### **Federal Agency Activities**

The federal agency conducting the activity is responsible for determining if the proposed activity will affect any coastal use or resource. For federal agency activities, if the federal agency finds that a proposed activity will affect any coastal use or resource of the Illinois coastal zone, then the federal agency must prepare and submit a "consistency determination" to the ICMP at least 90 days before final approval of the activity. The consistency determination must describe the federal agency activity, describe its coastal effects and describe how the federal agency will be consistent with applicable enforceable policies of the federally-approved ICMP. Federal agency activities requiring a consistency determination must be conducted in a manner "consistent to the maximum extent practicable." The phrase "consistent to the maximum extent practicable" mean fully consistent with the enforceable policies in the federally-approved ICMP, unless compliance is prohibited by existing law applicable to the federal agency's operations.

This chapter includes a "List of Federal Activities and Development Projects" where the ICMP believes the listed federal agency activity will have reasonably foreseeable effects to coastal uses or resources. For federal agency activities on the list, and also for federal agency activities not listed, the federal agency determines if the proposed activity will have reasonably foreseeable coastal effects, regardless of the location of the activity. If the federal agency determines there are coastal effects from a listed activity, it must provide IDNR with a consistency determination.

If the federal agency determines that an activity on the "List of Federal Activities and Development Projects" or other situation as described in 15 C.F.R. § 930.35 will not have coastal effects, then the federal agency shall provide the ICMP with a negative determination. The negative determination shall be submitted at least 90 days prior to final approval of the activity. It shall contain a brief activity description, its location, and the basis set for the negative determination. If the federal agency determines that its proposed action will not have reasonably foreseeable coastal effects, and a negative determination is not required, then the federal agency is not required to coordinate a federal consistency review.

The ICMP will provide for public participation in the ICMP review of federal agencies' consistency determinations. The ICMP will use joint public notices with federal agencies where possible to minimize duplication of efforts. For public notices that are not provided by the federal agency or a state agency reviewing the action, the ICMP will provide public notice on its website and in a local newspaper serving the coastal area most likely to be affected by the federal activity. The public notice shall summarize the activity and announce the availability for public inspection of the consistency determination and accompanying information. In addition, the ICMP will list federal activities and development projects submitted by a federal agency for consistency review on the ICMP website. The public comment period shall be 30 days from publication of the notice on the website and newspaper.

If the ICMP does not respond to a consistency determination or a negative determination within 60 days from ICMP receipt of the federal agency's consistency determination, then ICMP concurrence shall be presumed. State agency concurrence, objection and mediation procedures are outlined in 15 C.F.R. Part 930, Subparts C and G.

NOAA's regulations at 15 C.F.R. Part 930, Subpart C, encourage federal agencies to review their activities (other than development projects), to identify *de minimis* activities which can be considered by the ICMP as exclusions from consistency determinations. State and federal agencies may also agree to exclude environmentally beneficial federal agency activities from review. General consistency determinations, phased consistency determinations, and national or regional consistency

determinations are also available to facilitate federal-state coordination. These could include repeated or routine activities. These coordination measures along with the use of existing procedures will be used by the ICMP in order to reduce waste, duplication of effort, and to reduce federal and state agency administrative burdens. IDNR will work with applicable federal agencies to use these administrative provisions in NOAA's regulations and once IDNR and the federal agencies have agreed, these exclusions will be identified on the ICMP web site.

### **Federal Licenses or Permit Activities**

A private individual or business, or a state or local government agency, or any other type of non-federal entity, applying to the federal government for a required permit or license or any other type of authorization, is subject to the requirements of the federal consistency provisions of the CZMA and CZMA regulations (15 C.F.R. Part 930, Subpart D). The ICMP must determine that the activity is consistent with the enforceable policies of the ICMP and either concur with or object to an applicant's "consistency certification." The licensing federal agency cannot authorize the activity unless a state concurs or, if the state objects, the applicant appeals the state objection to the U.S. Secretary of Commerce and the Secretary overrides the state's objection.

For projects proposed by non-federal entities within the coastal boundary requiring a federal permit or license that is listed in the ICMP, the applicant must provide the federal agency and IDNR with a Consistency Certification in the following form: "The proposed activity complies with the enforceable policies of the ICMP and will be conducted in a manner consistent with such policies." The applicant must also provide to IDNR data and information necessary to demonstrate consistency. Concurrence shall be conclusively presumed if the ICMP's response is not received within six months from the ICMP's receipt of the consistency certification.

Illinois has identified a "List of Federal Licenses and Permit Activities" (provided at the end of this chapter), which the state believes could affect a coastal use or resource if conducted with the state's coastal zone and will review for federal consistency. Federal license and permit activities not listed at the end of this chapter will be monitored with the assistance of and consultation with state and local agencies and IDNR may choose to request NOAA approval to review unlisted activities on a case-by-case basis pursuant to 15 C.F.R. § 930.54.

In Illinois, there are several coordination mechanisms between state and federal agencies that jointly seek input and review of actions. For example, construction projects in Illinois waterways, floodplains and wetlands often require both state and federal authorization. In order to simplify the approval process for the applicant seeking project authorizations from the USACE, the IDNR Office of Water Resources, and the IEPA, a joint application process was established. The "joint application form" allows for a coordinated review of identical information, as provided in the application, in seeking authorizations pursuant to Sections 401 and 404 of the Clean Water Act and the Rivers, Lakes and Streams Act (615 ILCS 5). This process also allows for consultation under the provisions of the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-664), which gave the IDNR the permit review responsibilities relative to Corps of Engineers permit applications.

The issuance of relevant state permits can constitute ICMP consistency concurrence, if the state permitting agency coordinates with IDNR, ensures that all applicable ICMP policies and public participation requirements are met, and complies with all applicable CZMA procedures and time frames.

The ICMP will rely upon the public notice provided by the federal agency reviewing the application for the federal license or permit if such notice satisfies the minimum requirements set forth in 15 C.F.R. § 930.61. If public notice cannot be satisfied in this manner, then public notice will be provided for as stated under “Federal Agency Activities.”

### **Federal Assistance to State and Local Governments**

For federal financial assistance programs to state agencies or local governments, the applicant agency shall submit an application to the ICMP for consistency review if the assistance program is included in the ICMP federal consistency lists or if IDNR seeks to review an unlisted assistance activity pursuant to 15 C.F.R. Part 930, Subpart F. IDNR’s timeframe for reviewing federal financial assistance activities is within 60 days.

### **ICMP Federal Consistency Review Procedures**

The ICMP Office within IDNR is the lead State agency for federal agencies and the public to discuss consistency reviews. All applications, consistency determinations, negative determinations, consistency certifications and other federal consistency requests shall be submitted to the ICMP Office. The ICMP Office will be the sole responsible entity for making final decisions for federal consistency and for providing any written decisions to federal agencies and applicants.

Members of the Technical Advisory Committee are responsible to submit appropriate consistency information to the ICMP. The ICMP has communicated with the relevant federal agencies and non-federal applicants will be advised in the state permit process to consult with the ICMP for consistency review. In addition all state agencies are bound by Executive Order 10-14 to comply with policies of the ICMP.

Here is the outline of the coordination between the ICMP and other permitting units of state government.

1. ICMP receives request for consistency determination from federal agency.
2. Within 14 days ICMP provides 30 day public notice for comments on whether proposed activity is consistent with ICMP enforceable policies.
3. Within 14 days ICMP forwards request for consistency determination to appropriate permit office at IDNR, IEPA, or other state agency. These agencies have 30 days to review and return comments to ICMP.
4. ICMP makes consistency determination within 60 days.

The IDNR/ICMP Office will be the lead state agency for coordinating the review of federal actions to determine consistency of proposed actions with the ICMP. The IDNR will also be responsible for securing necessary review and comment from other state, regional, or local government agencies, and, where applicable, the public.

The ICMP has developed a networked program that will rely on the appropriate state agency to evaluate the federal action for consistency under their authoritative responsibilities. The networked state

agencies responsible for administering or implementing the state policy or authority that will potentially be affected by the federal action or activity are identified in Chapter 9.

Each of the state agencies networked with the ICMP manages its own responsibilities, issues its own permits, and administers its own federal grant programs. ICMP staff will coordinate federal consistency reviews with these state agencies to ensure that all applicable enforceable policies are considered. However, federal consistency decisions shall only be made by the ICMP Office.

**Consistency Determination and Review Process for Federal Agency Activities  
(See 15 C.F.R. Part 930, Subpart C for complete requirements)**

The federal agency proposing an activity within or outside of Illinois' coastal zone determines if a proposed activity will affect any land or water use or natural resource of the coastal zone. All "development projects" (i.e. construction) within the coastal zone are construed as activities affecting the coastal uses or resources. If the federal agency decides that a proposed activity does affect Illinois' coastal uses or resources, it prepares and submits to the ICMP a Consistency Determination at least 90 days before final approval of the activity. If the agency decides that the activity does not affect coastal uses or resources, the agency may have to provide the state (at least 90 days prior to final approval of the activity) with a negative determination as required under 15 C.F.R. § 930.35.

Regulated Navigation Areas, safety zones, and security zones of one week or less in duration can be categorized as 'de minimis' under 15 CFR § 930.33. A Consistency Determination must include a detailed description of the activity, its coastal effects, and comprehensive data and information sufficient to support such determination.

The ICMP Office coordinates the state's review of the Consistency Determination with the appropriate state agencies. The state has 60 days from receipt (plus appropriate extensions, if granted) to concur with or object to the federal agency's consistency determination. Concurrence is presumed if the ICMP does not respond (or request an extension) within 60 days.

If the ICMP Office objects to a Consistency Determination, it must describe why the proposed activity will be inconsistent with specific enforceable policies and should describe any alternative measures that would allow the activity to proceed. If the federal agency has failed to provide sufficient information, the ICMP Office may describe the nature of the information required and its necessity and may also object for lack of information.

The ICMP Office will provide public notice after a Consistency Determination has been received. Where possible, the ICMP Office will provide a joint public notice with the relevant federal agency. The public notice shall summarize the activity and announce the availability for public inspection of the Consistency Determination and accompanying public information and data. The public will be able to provide comment on whether the project is consistent with the enforceable policies of the ICMP. If there is a dispute between the federal agency and the ICMP Office regarding the Consistency Determination, either party may seek the mediation services of the U.S. Secretary of Commerce or NOAA's Office of Ocean and Coastal Resource Management (OCRM).

**Consistency Certification and Review Process for Federal License or Permit Activities  
(See 15 C.F.R. Part 930, Subpart D for complete requirements)**

Applicants for federal licenses or permits must submit a consistency certification in their application to the federal agency, furnishing the ICMP a copy of such certification and data and information necessary to demonstrate consistency.

For an activity not included in the list of Federal Licenses or Permits subject to Federal Consistency on p. 165 (an “unlisted activity”), an applicant is required to submit a consistency certification if: a) the Office decides that such activity will affect the ICMP coastal uses or resources; b) the ICMP Office properly informs the federal agency, the applicant, and OCRM; and c) OCRM approves the ICMP Office’s unlisted activity review. The federal agency and the applicant have 15 days from receipt of the ICMP Office’s decision to provide comments to OCRM. In the event of a dispute between a federal agency and the ICMP Office regarding whether an unlisted federal license or permit activity is subject to consistency review, either party may consult with OCRM.

The consistency certification consists of a statement in a letter to the ICMP Office or in the applicant’s application to the federal agency that states, “The proposed activity complies with the enforceable policies of Illinois’ approved coastal management program and will be conducted in a manner consistent with such policies.” The applicant must also furnish the ICMP Office with a sufficient project description and the necessary data and information described at 15 C.F.R. § 930.58 to demonstrate consistency.

Following the ICMP Office's receipt of the consistency certification and the necessary data and information, the ICMP Office will provide public notice according to IC 4-21.5 and 15 C.F.R. § 930.61. Where possible, the ICMP Office will provide a joint public notice with the relevant federal agency. The public notice shall summarize the activity and announce the availability for public inspection of the consistency certification and accompanying public information and data.

If the consistency review will take over three months, the ICMP Office must notify the applicant and the federal agency. The ICMP Office will concur with or object to the consistency certification within six months.

If the same activity requiring a federal license or permit also requires a state permit, the issuance of a permit by the state will include and constitute a consistency decision. The state will evaluate project consistency based on the ICMP enforceable police as described at the end of this chapter.

Early coordination with the ICMP is encouraged for projects affecting ICMP coastal uses or resources. If the ICMP Office concurs with the consistency certification, it will notify the federal agency and the applicant immediately. The agency is then free to either issue or deny the federal license or permit. If the ICMP Office objects to the consistency certification, it must notify the applicant, the federal agency, and OCRM, and the federal agency cannot authorize the activity, unless the applicant appeals to the Secretary of Commerce and the Secretary overrides the ICMP Office’s objection.

#### **Consistency Review Process for Federal Financial Assistance Activities (See 15 C.F.R. Part 930, Subpart F for complete requirements)**

A government unit at the state or local level, or any related public entity, submitting an application for federal financial assistance for an activity affecting Illinois’ coastal uses or resources must obtain the ICMP’s consistency concurrence in order to receive such assistance if the federal financial assistance

program is listed in the ICMP's federal consistency lists. The applicant should submit the application for federal assistance to the ICMP Office.

The ICMP Office will conduct the consistency review for federal financial assistance activities. The ICMP Office will coordinate with the appropriate state agency for consistency review. In the event of a dispute between a federal agency and the ICMP regarding whether a federal assistance activity is subject to consistency review, either party may request mediation by the Secretary of Commerce.

The ICMP Office can either concur with or object to the application based on the consistency of proposed actions within the application. The ICMP Office will notify the applicant and the federal agency of its decision within 60 days of receipt of application for federal assistance. Objections will also be sent to OCRM. If the ICMP Office determines that the proposed project is consistent with ICMP enforceable policies, the federal agency may approve or deny the request for assistance. If the federal agency denies the request, it must immediately notify the applicant and the ICMP Office. If the ICMP Office objects to the proposed project, the federal agency shall not approve assistance for the project, unless the applicant successfully appeals to the Secretary of Commerce.

### **Conflict Resolution**

**(See 15 C.F.R. Part 930, Subpart G for complete requirements)**

In the event of a dispute between the federal agency and Illinois over whether the federal activity, federal license or permit, or federal financial assistance affects Illinois' coastal uses or resources or whether a consistency determination for a federal activity was correctly made, either party may seek mediation by the Secretary of Commerce or through OCRM (15 C.F.R. § Subpart G). The responding party has the option of participating, but if it declines, it must indicate the basis for its refusal to participate. The Secretary of Commerce will attempt to encourage participation, but if unsuccessful will cease efforts to mediate. Judicial review is available to any party without having to exhaust the mediation process.

### **Appeal Process**

**(See 15 C.F.R. Part 930, Subpart H for complete requirements)**

The applicant for a federal license or permit or for federal financial aid who has been subject to a consistency objection by the ICMP Office may appeal to the Secretary of Commerce within 30 days of receipt of Illinois' objection (15 C.F.R. § 930 Subpart H). To appeal, the applicant should file a notice of appeal with the Secretary of Commerce, accompanied by a statement in support of the applicant's position and supporting data. The applicant should also send copies of these documents to the ICMP Office and the federal agency involved.

If the Secretary of Commerce finds that the proposed activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security, the federal agency may issue the license or permit or grant the financial aid. This is called a Secretarial override. If the Secretary does not make either of these findings, the federal agency shall not approve the activity. A Secretarial override does not obviate the need for the applicant to obtain any permit or other authorization required by the state of Illinois.

### **Overview of the ICMP Federal Consistency Review Process**

1. For Federal Agency Activities:

- a. Federal Agency makes determination that proposed activity affects any land or water use or natural resource of the Illinois coastal zone;
  - b. Federal Agency prepares and submits consistency determination to the ICMP Office at least 90 days prior to final approval of activity;
  - c. The ICMP Office provides public notice to receive public comments on whether proposed activity is consistent with the enforceable policies of the ICMP and reviews Federal Agency consistency determination within 60 days;
  - d. If the ICMP Office objects to the Federal Agency determination it must state why the activity is inconsistent with specific enforceable policies; and
  - e. Disputes may be resolved through mediation services provided by OCRM.
2. For Federal License or Permit Activities:
- a. Applicants must submit consistency certification and necessary data and information to the ICMP Office;
  - b. For unlisted activities, the ICMP Office may require a consistency certification if prior approval is granted by OCRM;
  - c. ICMP Office has six months to respond to a consistency certification, but ICMP Office must notify applicant if review will go beyond three months; and
  - d. Applicant may appeal an ICMP Office's objection to the Secretary of Commerce.
3. For Federal Financial Assistance:
- a. Public entities applying for federal financial assistance must submit the application to the ICMP Office for review if activity is listed;
  - b. The ICMP Office will review application for consistency within 60 days;
  - c. If the ICMP Office objects to the application it will notify applicant and OCRM; and
  - d. An applicant agency may appeal an ICMP Office objection to the Secretary of Commerce.

### **ICMP Lists of Federal Actions Subject to Federal Consistency**

#### **Federal Agency Activities (16 U.S.C. § 1456(c)(1) and 15 C.F.R. Part 930, Subpart C)**

Department of Defense-Secretary of the Army and the Army Corps of Engineers – 33 U.S.C. § 404-426, 33 U.S.C. § 471-472, 33 U.S.C. § 540-633, 33 U.S.C. § 701, 16 U.S.C. § 460d, 42 U.S.C. § 1962d-5, 10 U.S.C. § 801, 33 U.S.C. § 1251

- Constructing, maintaining and improving channels
- Dredging, storing, testing, sampling, dewatering, and disposing of dredged material
- Selection of storage, dewatering, and disposal sites for dredged material
- Building, maintaining, and repairing breakwaters, jetties, barriers, harbors, piers, docks

- Establishment of harbor lines
- Creation of permanent sand bypass systems
- Creating habitat areas, including wetlands and offshore islands, from dredged material
- Beach nourishment and replenishment activities, reinforcing dunes and beaches
- Creation of man-made dunes and other man-made land
- Building and maintaining erosion control structures
- Constructing navigational works, and marking anchorage grounds
- Constructing and maintaining flood control works, i.e., floodwalls, levees, diversion channels
- Land acquisition or disposal, including sites for disposal of dredged material
- Cleanup activities in areas contaminated with hazardous waste, radioactive waste, toxic waste, active munitions, hazardous substances or materials, or other wastes or debris

Department of Energy-Federal Energy Regulatory Commission – 42 U.S.C. § 7171, 16 U.S.C. § 796

- Grant of right of eminent domain for right of way for natural gas pipeline under the Natural Gas Act, 15 U.S.C. § 717f (h)

Department of Homeland Security-U.S. Coast Guard – 49 U.S.C. §108, 14 U.S.C.

- Location, design, construction, alteration, abandonment, or disposition of Coast Guard stations, bases, and lighthouses
- Expansion, abandonment, designation of anchorages, lighting areas, and shipping lanes
- Oil and hazardous material pollution response activities, and Area Contingency Plans developed under Sec. 311 of the Clean Water Act, 33 U.S.C. § 1321, as amended by the Oil Pollution Control Act of 1990, 33 U.S.C. § 2701
- Responses to the release of hazardous substances under CERCLA, 42 U.S.C. § 9601
- Construction, operation, maintaining, improving or expanding Vessel Traffic Services under the Port and Waterways Safety Act, 33 U.S.C. § 1221
- Regulating the bulk transport by vessel of hazardous material or petroleum products

Department of Interior-U.S. Fish and Wildlife Service – 16 U.S.C. § 742a

- Acquisition of lands, wetlands, and other suitable habitat for migratory birds, endangered species, and other wildlife; granting rights-of-way
- Fish habitat creation, maintenance, and management
- Recovery plans under Endangered Species Act, 16 U.S.C. § 1531
- Nuisance species (i.e., zebra mussel, lamprey) control measures  
Department of Transportation-Maritime Administration – 49 U.S.C. § 109, 40 U.S.C. § 474, 46 U.S.C. § S App. 861, 46 U.S.C. § S App. 1101, 46 U.S.C. § App. 1601
- Port planning

Environmental Protection Agency – 42 U.S.C. § 6901, 42 U.S.C. § 9601, 33 U.S.C. § 1341, 42 U.S.C. § 300h

- Activities conducted under CERCLA (Superfund), 42 U.S.C. § 9601
- Activities conducted under Resource Conservation & Recovery Act, 42 U.S.C. § 6901
- Open disposal of dredged material
- Oil and hazardous material pollution response planning and response activities, and Area Contingency Plans developed under the Oil Pollution Control Act, 33 U.S.C. § 1321

General Services Administration – 40 U.S.C.

- Disposition and disposal of federal surplus lands and structures

**Federal License or Permit Activities (16 U.S.C. § 1456(c)(3)(A) and 15 C.F.R. Part 930, Subpart D):**

Department of Defense-Secretary of the Army, and Army Corps of Engineers

- Permits for the construction of structures (i.e., piers, wharves, breakwaters, bulkheads, jetties, weirs, transmission lines, pipes, or pipelines) in, under, or over navigable waters required by Sec. 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403
- Permits for excavating or dredging from navigable waters, or for the alteration or modification of the course, location, condition, or capacity of such waters, required by Sec. 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403
- Permits for disposal of dredged or fill material into navigable waters required by Sec. 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403
- Permits for the disposal of dredged or fill material into waters of the United States required by Sec. 404 of the Clean Water Act, 33 U.S.C. § 1344
- Permits for the alteration or occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S., or of any piece of plant used in the construction of such work, or of any

material composing such work, required by Sec. 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408

#### Department of Energy-Federal Energy Regulatory Commission – 42 U.S.C. § 101

- Licenses, renewals, or amendments to licenses, or approvals for transfers of licenses or rights thereunder, for nonfederal hydroelectric projects and primary transmission lines under Sec. 3 (11), 4(e), 8, and 15 of the Federal Power Act (FPA), 16 U.S.C. § 796 (11), 797(e), 801, and 808, and under Sec. 405 of FPA, 16 U.S.C. § 2701
- Regulation of transportation of natural gas, and the entities engaged in such, under Sec. 1(b) of the Natural Gas Act (NGA), 15 U.S.C. § 717(b)
- Issuing certificates of public convenience and necessity for the construction and operation of interstate natural gas pipelines and pipeline facilities, and for the transportation of natural gas, under 7(c) of the NGA, 15 U.S.C. § 717f (c)

#### Department of Homeland Security-United States Coast Guard

- Approval of construction or modification of bridges, causeways, pipelines, or other structures over, on, or under navigable waters pursuant to Sec. 9 or 10 of the Rivers and Harbors Act, 33 U.S.C. § 401, 403, and the Bridge Act, 33 U.S.C. § 491
- Marine event permits issued under authority of 33 U.S.C. § 1233, found at 33 C.F.R. § 100.15 lasting one week or less in duration can be categorized as a “minor activity”

#### Environmental Protection Agency

- National Pollutant Discharge Elimination System (NPDES) permits and other permits for federal installations discharges, sludge runoff, aquaculture permits and all other permits pursuant to Sections 401, 402, 405, and 318 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. § 1341, 1342, 1345, and 1328
- Permits pursuant to the Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C. § 9601
- Permits pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. § 6901

#### Nuclear Regulatory Commission

- Licensing, certification, and determination of the siting, construction, and operation of nuclear generating stations, fuel storage, and processing centers pursuant to the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10101 *et seq.*, Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*, and Title II of the Energy Reorganization Act of 1974, 42 U.S.C. § 5841 *et seq.*

#### **Federal Financial Assistance Activities (16 U.S.C. § 1456(d) and 15 C.F.R. Part 930, Subpart F):**

This is a list of federal financial programs that require a federal consistency review. Numbers refer to the Catalog of Federal Domestic Assistance Programs. Program descriptions can be found at the Catalog's website at [www.gsa.gov/fdac](http://www.gsa.gov/fdac).

Department of Agriculture

- 10.028 Wildlife Services
- 10.069 Conservation Reserve Program
- 10.072 Wetlands Reserve Program
- 10.086 Aquaculture Grants Program (AGP)
- 10.093 Voluntary Public Access and Habitat Incentive Program
- 10.099 Conservation Loans
- 10.683 National Fish and Wildlife Foundation
- 10.760 Water and Waste Disposal Systems for Rural Communities
- 10.770 Water and Waste Disposal Loans and Grants (Section 306C)

Department of Commerce

- 11.300 Investments for Public Works and Economic Development Facilities
- 11.407 Inter-jurisdictional Fisheries Act of 1986
- 11.427 Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program
- 11.463 Habitat Conservation

Department of Defense

- 12.100 Aquatic Plant Control
- 12.101 Beach Erosion Control Projects
- 12.102 Emergency Rehabilitation of Flood Control Works or Federally Authorized Coastal Protection Works
- 12.103 Emergency Operations Flood Response and Post Flood Response
- 12.104 Flood Plain Management Services
- 12.105 Protection of Essential Highways, Highway Bridge Approaches, and Public Works
- 12.106 Flood Control Projects
- 12.107 Navigation Projects
- 12.108 Snagging and Clearing for Flood Control
- 12.109 Protection, Clearing and Straightening Channels
- 12.110 Planning Assistance to States
- 12.610 Joint Land Use Studies (Defense Authorization Act, 10 U.S.C. 2391)

Department of Housing and Urban Development (Sections refer to the National Housing Act)

- 14.246 Community Development Block Grants/Brownfields Economic Development Initiative
- 14.523 Transformation Initiative Research Grants: Sustainable Community Research Grant Program
- 14.703 Sustainable Communities Regional Planning Grant Program

Department of the Interior

- 15.605 Sport Fish Restoration Program

15.608 Fish and Wildlife Management Assistance  
 15.611 Wildlife Restoration  
 15.614 Coastal Wetlands Planning, Protection and Restoration Act  
 15.615 Cooperative Endangered Species Conservation Fund  
 15.616 Clean Vessel Act  
 15.622 Sportfishing and Boating Safety Act  
 15.623 North American Wetlands Conservation Fund  
 15.916 Outdoor Recreation Acquisition, Development and Planning  
 15.918 Disposal of Federal Surplus Real Property for Parks, Recreation, and Historic Monuments

#### Department of Transportation

20.205 Highway Planning and Construction  
 20.219 Recreational Trails Program  
 20.500 Federal Transit Capital Investment Grants  
 20.514 Public Transportation Research  
 20.600 State and Community Highway Safety  
 20.933 Surface Transportation Infrastructure Discretionary Grants for Capital Investments II

#### Environmental Protection Agency (EPA)

66.454 Water Quality Management Planning  
 66.458 Capitalization Grants for Clean Water State Revolving Funds  
 66.460 Nonpoint Source Implementation Grants  
 66.461 Regional Wetland Program Development Grants  
 66.462 National Wetland Program Development Grants and Five-Star Restoration Training Grant  
 66.463 Water Quality Cooperative Agreements  
 66.468 Capitalization Grants for Drinking Water State Revolving Funds  
 66.469 Great Lakes Program  
 66.472 Beach Monitoring and Notification Program Implementation Grants  
 66.474 Water Protection Grants to the States  
 66.479 Wetland Program Grants - State/Tribal Environmental Outcome Wetland Demonstration Program  
 66.480 Assessment and Watershed Protection Program Grants  
 66.701 Toxic Substances Compliance Monitoring Cooperative Agreements  
 66.708 Pollution Prevention Grants Program  
 66.801 Hazardous Waste Management State Program Support  
 66.802 Superfund State, Political SubOffice, and Indian Tribe Site-Specific Cooperative Agreements  
 66.804 Underground Storage Tank Prevention, Detection and Compliance Program  
 66.805 Leaking Underground Storage Tank Trust Fund Corrective Action Program  
 66.808 Solid Waste Management Assistance Grants  
 66.809 Superfund State and Indian Tribe Core Program Cooperative Agreements  
 66.810 Chemical Emergency Preparedness and Prevention (CEPP) Technical Assistance Grants Program  
 66.813 Alternative or Innovative Treatment Technology Research, Demonstration, Training, and Hazardous Substance Research Grants  
 66.816 Headquarters and Regional Underground Storage Tanks Program  
 66.818 Brownfields Assessment and Cleanup Cooperative Agreements  
 66.940 Environmental Policy and State Sustainability Grants

Department of Energy (DOE)

81.041 State Energy Program

81.119 State Energy Program Special Projects

Department of Health and Human Services (HHS)

93.113 Environmental Health

93.887 Health Care and Other Facilities

### Enforceable Policies

Federal consistency provides states with an important tool to manage coastal uses and resources and to facilitate cooperation and coordination with Federal agencies. Chapters 9 and 10 identify the key management statutes, state agency authorities, and state cooperative programs to assist in the cooperation and coordination of federal actions. The following represent the ICMP's enforceable policies for federal consistency purposes:

*NOTE: Enforcement of these state laws comes from the regulatory and or permitting process.*

Enforceable policies implemented through a permitting system include:

- *Rivers, Lakes, and Streams Act, 615 ILCS 5:* Establishes IDNR as the agency with jurisdiction over public waters in the state. It requires permits for any construction activity in any public water.
- *Floodway Construction in Northeastern Illinois, 17 IAC 3708.100:* Permits construction in a floodway and provides for injunctive relief for abatement of removal of unlawful construction
- *Allocation of Water from Lake Michigan, 17 IAC 3730.301:* Allows for the use of water from Lake Michigan per allocation permit issued by IDNR.
- *Fish and Aquatic Life Code, 515 ILCS 5:* Establishes authority for IDNR to develop rules permitting the taking of aquatic life in the state.
- *Illinois Endangered Species Act, 520, ILCS 10:* Establishes authority for IDNR to develop rules permitting the taking of wildlife in the state.
- *Public Utilities Act, 220 ILCS 5/8-406:* Requires public utilities to obtain a permit before conducting business, or beginning construction on any facility in the state.
- *Environmental Protection Act, Title II: Air Pollution, 415 ILCS 5/9:* Prohibits the discharge of any emission or contaminant that would cause air pollution without a permit.
- *Environmental Protection Act, Title III: Water Pollution 415 ILCS 5/11:* Prohibits the discharge of any contaminant that would cause water pollution without a permit.

Enforceable Policies implemented through a system of regulatory rules include:

- *Regulation of Public Waters, Section 17 IAC 3704.70, and 3704.90:* Prohibits any activity that would obstruct navigability of public waters, or contribute to bank or shoreline instability.
- *Shore Lands for Park Use Act, 65 ILCS 105:* Ensures that submerged lands transferred to local park districts must remain publicly held.
- *Navigable Waters Obstruction Act, 615 ILCS 20:* Prohibits the obstruction of navigable waters and provides for the disposition of sunken vessels impacting navigable waters.

- *Interagency Wetlands Policy Act of 1989, 20 ILCS 830*: Establishes the preservation of wetlands as a state priority when agencies develop construction or land management plans. It also provides for the development of a compensation plan to mitigate adverse impacts.
- *Illinois Natural Areas Preservation Act, 525 ILCS 30/3.11 and 30/3.02* Establishes rules allowing for the protection of natural areas for future generations.
- *Illinois Historic Preservation Act, 20 ILCS 3410*: Allows for the preservation of historical places, and prohibit the demolition of such places.
- *Archeological and Paleontological Resources Protection Act, 20 ILCS 3435*: Establishes primacy for the State of Illinois in regulating, exploring, excavating or surveying, all archaeological and paleontological resources found upon or within any public lands.

*Civil violations are enforced through administrative channels and the Attorney General of the State of Illinois. Criminal violations are enforced by the State's Attorney's office and the Attorney General of the State of Illinois.*

#### Category 1: Public Waters, Navigation and the Public Interest

1.1 *The building of any causeway, harbor, or mooring facilities for watercraft in Lake Michigan shall be confined to those areas recommended by the IDNR and authorized by the General Assembly and approved by the governor and shall be in aid of and not an interference with the public interest or navigation. Any structure, fill, or deposit erected or made in any of the public bodies of water of this state is a purpresture and may be abated as such at the expense of the person, corporation, or municipality. The terms public waters or public bodies of water mean all open public streams and lakes capable of being navigated by water craft for commercial uses and purposes, and all lakes, rivers, and streams which in their natural condition were capable of being improved and made navigable, or that are connected with or discharged their waters into navigable lakes or rivers within, or upon the borders of the state. See **Rivers, Lakes and Streams Act**, 615 ILCS 5*

1.2 *It is unlawful to make any fill or deposit of rock, earth, sand, or other material, or any refuse matter of any kind or description or build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, causeway, harbor, or mooring facilities for watercraft, or build or commence the building of any other structure, or do any work of any kind whatsoever in any of the public bodies of water within the state of Illinois, without first submitting the plans, profiles, and specifications therefor, and such other data and information as may be required, to the IDNR and receiving a permit therefor signed by the IDNR Director and authenticated by the seal thereof. See **Rivers, Lakes and Streams Act**, 615 ILCS 5.*

1.3 *The conversion of public waters to private land by filling is prohibited. Fill material may be placed in public waters only for bank, shore or bluff protection; beach nourishment; establishing a uniform shoreline; spur dikes, wing dams, and similar structures; dams; projects of an emergency nature; or projects authorized by the General Assembly. No activity which would result in an obstruction to, or interference with, the navigability of any public body of water will be permitted. No activity which would result in bank or shoreline instability on other properties will be permitted. See **Regulation of Public Waters**, Sections 17 IAC 3704.70 and 17 IAC 3704.90.*

1.4 *A city or village owning lands bordering public waters and riparian rights may grant, convey or release any of such lands or rights to any park entity for park purposes of submerged lands under the public waters adjacent to the lands controlled by such city or village; however, that no such park entity*

may grant, convey, lease or release any lands so acquired or the riparian rights appurtenant thereto to any private person or corporation. See **Shore Lands for Park Use Act**, 65 ILCS 105.

1.5 *It is unlawful to tie up or anchor vessels or other water craft in public or navigable waters of the state in such a manner as to prevent or obstruct in any manner, between the shore lines thereof, the passage of any vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other water craft in such waters. See **Navigable Waters Obstruction Act**, 615 ILCS 20.*

#### Category 2: Flooding

2.1 *All construction undertaken in a regulatory floodway without a permit, or contrary to a permit issued in accordance with IAC 3708P, shall be unlawful and the IDNR or any affected municipality or county will proceed to obtain injunctive relief for abatement or removal of such unlawful construction. (See **Floodway Construction in Northeastern Illinois**, 17 IAC 3708.100.*

#### Category 3: Water Quality and Water Supply

3.1 *It is state policy to restore, maintain and enhance the purity of the waters of this state in order to protect health, welfare, property, and the quality of life, and to assure that no contaminants are discharged into the waters of the state, including, but not limited to, waters to any sewage works, or into any well, or from any source within Illinois, without being given the degree of treatment or control necessary to prevent pollution, or without being made subject to such conditions as are required to achieve and maintain compliance with state and federal law. No person shall cause, threaten or allow the discharge of any contaminants into the environment in any state to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or to violate regulations or standards adopted by the Illinois Pollution Control Board. See **Environmental Protection Act, Title III: Water Pollution**, 415 ILCS 5/11.*

3.2 *No permit shall be issued or renewed authorizing any fill or deposit of rock, earth, sand, or other material, or any refuse matter of any kind or description in Lake Michigan unless the IEPA makes a final determination that the proposed dredging or deposit of material will not cause a violation of the Environmental Protection Act or IPCB regulations. See **Rivers, Lakes and Streams Act**, 615 ILCS 5.*

3.3 *No regional organization, municipality, political subOffice, agency or instrumentality, or any other organization, association or individual desiring to use water from Lake Michigan, which is subject to allocation under the Level of Lake Michigan Act, shall divert or use any such water after July 1, 1977, unless it has previously obtained from the IDNR a valid allocation permit. See **Allocation of Water from Lake Michigan**, 17 IAC 3730.301.*

#### Category 4: Habitats, Wetlands and Wildlife

4.1 *The ownership of and title to all aquatic life within the boundaries of the state, are hereby declared to be in the state, and no aquatic life shall be taken or killed, in any manner or at any time, unless the person or persons so taking or killing the aquatic life shall consent that the title to the aquatic life shall be and remain in the state for the purpose of regulating the taking, killing, possession, use, sale, and transportation of aquatic life after taking or killing, as set forth in the Fish and Aquatic Life Code. If any person causes any waste, sewage, thermal effluent, or any other pollutant to enter into, or causes or allows pollution of, any waters of this state so as to kill aquatic life, the IDNR, through the Attorney*

*General, may bring an action against that person and recover the value of and the related costs in determining the value of the aquatic life destroyed by the waste, sewage, thermal effluent, or pollution. Illinois assents to the provisions of the Act of Congress entitled "An act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes" (Public Law 681, 81st Congress), and the IDNR is authorized, empowered, and directed to perform any acts necessary for the conduct and establishment of cooperative fish restoration projects, as defined in that Act of Congress, in compliance with that Act and its rules and regulations promulgated by the Secretary of the Interior. See **Fish and Aquatic Life Code**, 515 ILCS 5*

4.2 *State agencies shall preserve, enhance, and create wetlands where possible and avoid adverse impacts to wetlands from state and state pass-through funded activities, such as construction, land management, or technical assistance. It is the goal of the state that there be no overall net loss of the state's existing wetland acres or their functional value due to state supported activities. State agencies shall preserve, enhance, and create wetlands where necessary in order to increase the quality and quantity of the state's wetland resource base. See **Interagency Wetlands Policy Act of 1989**, 20 ILCS 830*

4.3 *Nature preserve means a natural area, and land necessary for its protection, any estate, interest or right in which has been dedicated under this Act to be maintained as nearly as possible in its natural condition and to be used in a manner and under limitations consistent with its continued preservation, without impairment, disturbance or artificial development, for the public purposes of present and future scientific research, education, esthetic enjoyment and providing habitat for plant and animal species and communities and other natural objects. See **Illinois Natural Areas Preservation Act**, 525 ILCS 30/525 ILCS 30/3.11.*

*Buffer area means an area of land, any estate, interest or right in which has been dedicated or registered under this Act as a buffer area because it protects, provides access to or otherwise serves as a necessary adjunct to a nature preserve or registered natural area or because in the opinion of the Commission it will, with protection, become a natural area suitable for dedication as a nature preserve in the future. See **Illinois Natural Areas Preservation Act**, 525 ILCS 30/3.02.*

4.4 *It is the public policy of all agencies of state and local governments to use their authorities in furtherance of the purposes of the Illinois Endangered Species Protection Act by evaluating through a consultation process with the IDNR whether actions authorized, funded, or carried out by them are likely to jeopardize the continued existence of Illinois listed endangered and threatened species or are likely to result in the destruction or adverse modification of the designated essential habitat of such species. See **Illinois Endangered Species Protection Act**, 520 ILCS 10.*

4.5 *Aquatic and Terrestrial Invasive species represent a significant threat to indigenous species. The IDNR prohibits injurious species as listed in 17 IAC 805.20 from being possessed, propagated, bought sold, bartered, transported, traded, transferred or loaned to any other person or institution unless a permit is first obtained. All waters subject to the jurisdiction of the state, including boundary waters, are considered aquatic preserves in which the aquatic life may only lawfully be taken by sport fishing. See **Illinois Endangered Species Protection Act**, 520 ILCS 10.*

Category 5: Historic, Archaeological and Cultural Resources

5.1 The Illinois Historic Preservation Agency (IHPA) maintains an Illinois Register of Historic Places. Historic places are designated by the IHPA Director upon the recommendation of the Illinois Historic Sites Advisory Council, which has the power to advise the IHPA on matters pertaining to historic preservation. It is unlawful to *“demolish, cause to be demolished, or permit or order the demolition of any Critical Historic Feature of a Registered Illinois Historic Place unless the Director has issued a Certificate of Compliance for the proposed action.”* Critical historic features are *“those physical and environmental components which taken singly or together make a place eligible for designation as a Registered Illinois Historic Place.”* State agencies must not expend public funds on projects which will have an adverse economic or environmental impact on a registered historic place unless the Director of the IHPA determines that the project is necessary to provide an important public service or benefit, the project cannot be carried out practically so as to avoid the adverse effect and the adverse effect is minimized to the maximum extent feasible. See **Illinois Historic Preservation Act**, 20 ILCS 3410.

5.2 The state has *“the exclusive right and privilege of regulating, exploring, excavating or surveying, through the IHPA, all archaeological and paleontological resources found upon or within any public lands.”* Archaeological resources include *“any significant material remains or localities of past human life or activities on public land, including but not limited to artifacts, historic and prehistoric human skeletal remains, mounds, earthworks, shipwrecks, forts, village sites or mines.”* The exploration, excavation, or collection of an archaeological or paleontological resource without a permit from the IHPA is prohibited. See **Archaeological and Paleontological Resources Protection Act**, 20 ILCS 3435.

#### Category 6: Recreation and Public Access

There are no ICMP enforceable policies in this category for federal consistency purposes, however category 1.1, 1.2, 1.3 and 1.4 reference the public interest and public waters.

#### Category 7: Economic Development

There are no ICMP enforceable policies in this category for federal consistency purposes.

#### Category 8: Energy Facilities and Air Quality

8.1 A *“Certificate of Public Convenience and Necessity”* (CPCN) is required for projects owned by a regulated facility, and requires information on cost and need for the project prior to construction. The Illinois Commerce Commission has the authority for granting the CPCN for the construction of a new electric generating facility, and reevaluates the propriety and necessity for the certificate at least every 3 years. See **Public Utilities Act**, 220 ILCS 5.

8.2 It is state policy to restore, maintain, and enhance the purity of the air of this state in order to protect health, welfare, property, and the quality of life and to assure that no air contaminants are discharged into the atmosphere without being given the degree of treatment or control necessary to prevent pollution. No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Illinois Pollution Control Board. See **Environmental Protection Act, Title II: Air Pollution**, 415 ILCS 5/9.

8.3 The IEPA shall not issue any permit to develop, construct, or operate, within one mile of any portion of Lake Michigan that has been designated an Area of Concern (Waukegan Harbor has been designated an Area of Concern) under the Great Lakes Water Quality Agreement, any site or facility for the thermal treatment of sludge, unless the applicant submits to the IEPA proof that the site or facility has received local siting approval from the governing body of the municipality in which the site or facility is proposed to be located (or from the county board if located in an unincorporated area), in accordance with Section 39.2 of this Act. See ***Environmental Protection Act, Title 2: Air Pollution***, 415 ILCS 5/9.11.